



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,407	08/01/2003	Jose F. Zamudio-Tena	00216-594001	2932

26163 7590 06/30/2006
FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

DODSON, SHELLEY A

ART UNIT PAPER NUMBER

1616

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/632,407	Applicant(s) ZAMUDIO-TENA ET AL.	
	Examiner SHELLEY A. DODSON	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


SHELLEY A. DODSON
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Serial No. 10/632,407
Art Unit 1616

-2-

DETAILED ACTION

Response to Amendment

1.

Applicant's arguments filed April 10, 2006 have been fully considered but they are not deemed to be persuasive.

2.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Serial No. 10/632,407
Art Unit 1616

-3-

3.

The rejection of record made under 35 USC 102(b) over claims 1-23 as being anticipated by Holzner USP No. 4,803,195 is hereby expressly withdrawn.

Claim Rejections - 35 USC § 112

4.

Claims 15-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15-22 are viewed as indefinite because of applicant's recitation of the phrase "pre-hydrating hydratable capsules to a predetermined extent". It is not readily apparent to the examiner what applicant intends by said phrase. a "predetemined extent" is

viewed as a relative term or phrase. Exactly what is meant by the term "predetermined extent"? This term renders the claims indefinite in that applicant has set no limit for said term and has not clearly defined exactly what is meant by "predetermined extent". The term "predetermined extent" is a relative term because what would be considered "predetermined extent" to one might not be considered "predetermined extent" to another without further guidance and direction appearing in the claims for one of ordinary skill in the art to ascertain the meets and bounds of the claimed limitations. Limitations from the specification will not be read into unpatented claims to determine the meets and bounds of said limitations. In re Prater and Wei 162 USPQ 541. Unpatented claims are given the broadest reasonable interpretation consistent with the supporting disclosure, and the limitations in the specification are not read into unpatented claims without a proper claim basis therefore. In re Zeltz 893 F.2d 319, USPQ 1320 (Fed. Cir 1989).

Claim Rejections - 35 USC § 103

5.

The following is a quotation of 35 U.S.C. 103(a) which forms

the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angelone, Jr. et al. USP 5,587,153, cited and supplied by applicant in view of Nichols USP 5,000,947.

Angelone, Jr. et al. disclose clear-gel cosmetic compositions which include an emulsion with an oil and water phase that included an active ingredient. Angelone further discloses that the refractive indices of the water and oil phases match to at least 0.0004 and the product clarity is better than thirty NTU. Angelone further discloses that said compositions may be deodorants or antiperspirants. Angelone also discloses that the fragrance is added to the oil phase, Note examples 1-7. Angelone discloses each and every aspect of the invention as claimed by the applicant with the exception of the presence of a plurality of visible capsules, specifically cellulosic capsules.

Nichols discloses liquefiable powders for delivery of cosmetic and other personal care agents. In column 2, lines 45-60 Nichols further discloses that said capsules are cellulosic powders from one to about 500 microns in size. These particles at this size of 500 microns would be visible to the naked eye and the reference teaches that said particles are from about 50 to about 95 percent by weight of the composition. In claim 43 Nichols discloses that said personal care compositions may be deodorants or antiperspirants.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the visible cellulosic capsules of Nichols into the antiperspirant or deodorant compositions and method of making the same of Angelone in view of the teaching of Nichols that said cellulosic capsules are known to be used in personal care compositions such as antiperspirants or deodorants.

Telephone Inquiries

7.

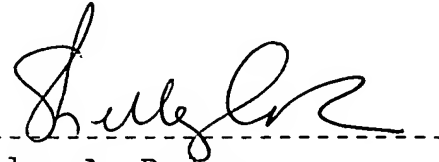
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (571) 272-0612 and fax number (571) 273-0612. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached at (571) 272-0646.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair->

Serial No. 10/632,407
Art Unit 1616

-8-

direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Shelley A. Dodson", is written over a horizontal dashed line.

Shelley A. Dodson
Primary Examiner
Art Unit 1616

June 26, 2006